



REPUBLIC OF KENYA



In re Estate of Manasseh Amugombi Bilavu (Deceased) (Miscellaneous Application Probate & Administration 001 of 2021) [2025] KEHC 9228 (KLR) (30 May 2025) (Ruling)

Neutral citation: [2025] KEHC 9228 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
MISCELLANEOUS APPLICATION PROBATE & ADMINISTRATION 001 OF 2021**

JR KARANJA, J

MAY 30, 2025

BETWEEN

CAROLUNE LLIAN JELIMO APPLICANT

AND

JAMES AGALOMBA LUGOHE RESPONDENT

AND

BEATRICE ADUMA INTERESTED PARTY

RULING

1. The statutory provisions invoked in this application dated 2nd July 2024 include Order 42 Rule 6[1] of the *Civil Procedure Rules* and Rules 49, 63 and 73 of the *Probate and Administration Rules*.
2. Accordingly, the Applicant, James Agalomba Lugohe seeks the following order against the Respondent, Caroline Lilian Jelimo viz: -
 1. That, the application be certified and heard ex-parte in the first instance due to its urgency.
 2. That, there be stay of proceedings, execution and/or further actions in this cause pending the hearing and determination of the application inter-parties.
 3. That there be stay of proceedings, execution and further actions in this cause pending the hearing and determination of appeal to the Court of Appeal.
 4. That, costs of the application be provided for.
3. At this point the most significant and substantial prayer is prayer [3] for stay of proceedings execution and/or further actions in this cause pending the hearing and determination of appeal to the Court of Appeal. The Notice of Appeal was filed herein on 6th March 2024.



4. The application is founded on the grounds set out in the appropriate chamber summons which are fortified by the Applicant's averments in his supporting affidavit dated 2nd July 2024.

The Respondent's opposition to the application is anchored on the grounds and averments expressed in her replying affidavit dated 17th September 2024, described herein as a further replying affidavit although there is non-other replying affidavit on the record.

5. Both parties filed their written submissions and after due consideration of the same in the light of the supporting grounds, it was clear to this court that what emerged as the basic issue for determination was whether the application was proper and competent before court and if so, whether the Applicant has demonstrated to the satisfaction of the court necessary ingredients for grant of stay of proceedings and/or execution pending hearing and determination of the intended appeal.
6. It is notable that the application is essentially anchored on the provisions of the *Civil Procedure Act* which do not apply to succession proceedings unless as provided for under Rule 63[1] of the *Probate & Administration Rules* in as much as it states that:-

“Save as is in the Act or in these Rules otherwise provided and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, merely Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIV [Cap 21, Sub leg] together with the High Court [practice and procedure] Rules [Cap 8 Sub-leg], shall apply so far as relevant to proceedings under there Rules.”

7. Clearly, Order 42 of the *Civil Procedure Rules* is not one of the rules or provisions of the *Civil Procedure Rules* incorporated into the *Law of Succession Act* and is not therefore applicable to appeals arising from succession disputes or from a succession court.

For this reason, the application may as well be considered to be improper and incompetent before the court or the court may divest its jurisdiction to deal with it.

8. However, the application is also made under Rule 49 and 73 of the *Probate & Administration Rules*. Rule 49 of the Rules provides for application not otherwise provided for under the Succession Rules and this is by way of filing a summons supported by affidavit.

Rule 73 on the other hand provides for inherent powers of the court such that nothing in the Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process.

9. It is on the basis of the foregoing provisions of the succession Rules that the present application may be considered as being competent and proper before this court which may therefore exercise its discretion herein to allow or dismiss the application. However, such discretion must be exercised judiciously and on solid grounds and in a manner that would not prevent the appeal from being heard and determined on merits [See, *Bhutt v Rent Restriction Tribunal* [1982]KLR 417].

10. Herein, the main grounds for the application is that the intended appeal is arguable, that it raises very serious and weighty legal issues. Such ground is in the opinion of this court irrelevant for an application such as the present one made before the court which issued the impugned ruling and order. The court of appeal would be the right forum for the Applicant to rely on such ground which is akin to an invitation for this court to sit on appeal against its own decision.

11. In any event, the existence of arguable grounds of appeal does not automatically entitle an Applicant to an order of stay. He must also establish to the satisfaction of the court other substantial grounds for which stay may be granted.



The Applicant in his supporting grounds merely states that sufficient cause exists to warrant the grant of the stay order. He does not identify or specify the sufficient cause, but in his supporting affidavit and submissions alludes to substantial loss as being the sufficient cause to warrant grant of stay orders.

12. The Applicant contends that if the Respondent is allowed to proceed with execution or implementation of the impugned decision of this court made on 23rd February 2024, then he would be seriously prejudiced and suffer substantial loss being an administrator and beneficiary of the estate of Japheth Bilabu Rukohe [deceased]. He fears that the third parties who purchased the estate property from the deceased would sue him since they had already taken possession of part of the estate and some had already sold their respective portions.
13. The Applicant submitted that as at the time the disputed order was made the estate property had already been fully distributed and the beneficiaries taken possession. He opined that grant of a stay order would preserve the estate property, hence the subject matter of this case.
14. Basically, the net effect of the impugned ruling made on 23rd February 2024 was summarized in paragraph 22 of the ruling in the following terms: -

“in sum, the present application on the basis of all reasons foregoing is hereby allowed to the extent that the ruling of the court dated 2nd November 2020 is set aside and the Objector/Applicant’s application dated 18th April 2018, being a summons for revocation of the grant issued to the Respondent respecting the estate of the deceased Jafet/ Japhet/ Japheth Birabu Rukohe is hereby reinstated for hearing and determination in accordance with the provision of the *Law of Succession Act*.

The application dated 9th October 2019 is also reinstated to give effect to the order made by the court in respect thereof on the 18th December 2019 to the extent that the existing status quo be maintained pending the hearing and determination of the succession cause/suit i.e. the summons for revocation and/ or annulment of the impugned grant of letters of administration intestate dated 15th September 2016 as confirmed on 15th August 2017 in favour of the Respondent.”

15. A clear and straight forward reading of this ultimate order would invariably lead to the conclusion that there is nothing positive in the order capable of being executed.

In the case of *AG v James Hosea Gitau Mwaura* [2014] eKLR, the Court of Appeal stated that in order for a court to exercise its discretion to grant stay it must ask itself the question whether there is anything capable of being stayed in the ruling or decision sought to be impugned.
16. There is nothing in the impugned order to show that the existing state of affairs would drastically change against the Applicant and occasion him substantial loss since its ultimate effect was simply to reinstate for hearing the Respondent’s application which had earlier been dismissed by the court. There was no revocation of the material grant issued to the Applicant respecting the estate of the deceased.
17. For all the reasons foregoing it is the finding of this court that the Applicant has failed to satisfactorily or at all demonstrate the necessary ingredient for grant of a stay order and indeed that he is deserving of exercise of this court’s discretion in his favour.

In sum, the present application is dismissed with costs to the Respondent.

DELIVERED AND DATED THIS 30TH DAY OF MAY, 2025

HON. J. R. KARANJAH,



JUDGE

